IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2)(b)
Description of case

Writ Petition No. 955 of 2004 (M/B)

Date of decision: 28th September, 2004

For the Approval of:

Hon'ble Chief Justice V.S. Sirpurkar

Hon'ble Mr. Justice Irshad Hussain.

- Whether the order/judgment should be sent to the reporters for reporting? ( )

- Whether the reporter be allowed to see the judgment? (Yes)

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IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 955 of 2004 (M/B)

U.P. Purva Sainik Kalyan Nigam Ltd.
Lucknow through its General Manager
& another. …… Petitioners

Versus

State of Uttaranchal through Chief Secretary,
Civil Secretariat,
Dehradun & others. …….. Respondents

……

Mr. Paresh Tripathi, learned counsel for the petitioners.
Mr. B.D Upadhyaya, learned counsel for the respondent No. 3.
Mr. K.P. Upadhyaya, learned Brief Holder for the State.

Coram: Hon. V.S. Sirpurkar, C.J.
Hon. Irshad Hussain, J.

(Per Hon'ble the Chief Justice)

1. Rule Mr. K.P. Upadhyaya, learned Brief Holder accepts the notice on behalf of respondents No. 1 & 2 and Mr. B.D. Upadhyaya, learned counsel accepts the notice on behalf of respondent No. 3. Heard finally with the consent of the parties.

2. This is a writ petition challenging the communication at page 16 of the record being Notice No. 1623(B) ETD (D.Dun)/Security Guard dated 9.09.2004, which pertains to a notice to terminate the agreement w.e.f. 01.10.2004 as per clause (6) of the agreement. This agreement was between the petitioners and the respondent No. 3. The petitioners are a body for the benefit and welfare of the ex-army men and it is an agency to provide the guard etc. or the security services. Accordingly, there was an agreement between the parties dated 28.06.2004. Clause (6) of that agreement provided that the said agreement was terminable with one month's notice on either side.

3. It seems that a communication was received by the respondent No. 3 from the Secretary, Government of Uttaranchal reminding all the corporations that the Government of Uttaranchal, itself, had taken, the initiative in constituting Uttaranchal Purva Sainik Kalyan Udyam Ltd. (U.P.S.K.U.L.) and that wherever possible, for the contracts regarding the security etc., the U.P.S.K.U.L. should, alone, be

engaged and it is also pointed out that the contracts with the U.P. Sainik Kalyan Nigam Ltd. should be reviewed. In reference to that, probably, the notice has been sent, which has been challenged before us.

4. Mr. Paresh Tripathi, learned counsel for the petitioners says t hat, firstly, the communication dated 16.07.2004 bearing letter No. 1520/Seven/278-Industry/04 was not in the nature of a Notification. It was merely a direction or a communication from the Secretary, Government of Uttaranchal and that on that basis, the respondent No. 3 should not have proceeded to issue the notice.

5. We are really not concerned with that. The right of the petitioners flows only from the agreement, clause (6) of which provides very clearly that the agreement can be terminated with one month's notice by either side. If the said clause in the agreement has been relied upon for terminating the contract, we do not see as to how the petitioners could approach in a writ petitioner under Article 226 of the Constitution of India. If the petitioners are aggrieved, they may pursue such remedies as are available to them in law, but we do not find anything wrong with the notice having been issued for terminating the agreement.

6. Mr. Paresh Tripathi, learned counsel for the petitioners, further, says that even the communication dated 16.07.2004 was liable to be quashed as the concerned Secretary had no right whatsoever to pass such a communication. It is only a matter of policy by the Uttaranchal Government, which is reflected in that letter. That being so, the argument is not entertainable.

7. In view of the aforesaid, we do not find any merit in this writ petition and it is, accordingly, dismissed.

(Irshad Hussain, J.) **(V.S.Sirpurkar, C.J.)**
28.09.2004 **28.09.2004**

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